

# **ACCESS TO PUBLIC INTEREST INFORMATION UNDER LAW 544/2001**

**Final Report**  
**on three seminars held by ABA/CEELI with funding from**  
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# I. EXECUTIVE SUMMARY

The novelty of the laws on access to public interest information, the requirements imposed by the latest legislation, the sanctions for non-compliance with the principle of free access to public interest information, and a growing demand for information<sup>1</sup> represent only a few of the many challenges faced by Romanian judges who review cases arising under Law No. 544/2001.

In an effort to participate in the ongoing process of implementing the law and fulfilling the obligations arising under the current legislation, the American Bar Association/Central European and Eurasian Law Initiative (ABA/CEELI) included in its plan of activities (2003-2005), as part of its program funded by the United States Agency for International Development (USAID), a series of seminars on the topic of access to public interest information. The seminars were conducted during the second part of year 2004, in a partnership with the National Institute of Magistrates (NIM), in the following locations: Craiova (June 2, 2004), Constanta (September 9-10, 2004) and Iasi (October 21-22, 2004). The seminars gathered an audience of judges from the courts under the jurisdiction of the Craiova, Oradea, Constanta, Bucuresti, Iasi and Brasov Courts of Appeals, and public servants responsible for supervising the courts' offices of information and public relations.

The purpose of this report is to summarize the discussions held during these seminars, share the methodology employed, present some of the ensuing debates and submit the recommendations suggested by the magistrates. The report consists of three main sections and mirrors the topics of the agenda reviewed by the participants.

In the first part, the report gives a detailed presentation of the discussions ensuing a review of several hypothetical case studies. The case

<sup>1</sup> The Report of the Agency for Governmental Strategies on the implementation of Law No. 544/2001 on Access to Public Interest Information and of Law No. 52/2003 on Decision-Making Transparency in Public Administration mentions that the number of complaints filed in court under these laws increased in 2004 by 124% compared to 2003.

studies were the work-product of the seminar moderators and were designed precisely to discuss the solutions recommended by the judges and the arguments raised in their support. The case studies addressed controversial or unclear aspects of Law No. 544/2001 on Access to Public Interest Information and of the Government Decision No. 123/2002 which regulates the application of the law.

The second section of the report covers theoretical debates on specific controversial or unclear aspects of the laws on access to public interest information, as they were identified by the participants, as well as the interpretations offered by the attendees.

In the final part, the report presents the magistrates' opinions and suggestions referring to the type of information courts should deem as being of public interest and the kind of information or documents which courts should find confidential and therefore not subject to disclosure.

The authors are convinced that the final part of the report, covering commentaries and recommendations of approximately 75 judges should prove useful to courts and the Superior Council of Magistrates (SCM) when attempting to comply with the provisions of Article 5, paragraph (1), points (g) and (h) of Law No. 544/2001 (to develop and make public the list of court information and documents that should be released to the public on demand).

CEELI will prepare a final list of public information and documents that should be released to the public on demand. This list will be submitted to the SCM for approval. In an effort to establish a consistent practice in this area, the approved list should then be distributed to all the courts in Romania.

**Participants.** For each seminar, participants were generally selected from among those judges who review cases under Law No. 544/2001, in the administrative law divisions of the aforementioned courts. Also, the attendees included clerks in charge of information and public relations offices of these courts.

**Moderators.** The three seminars were moderated by Roxana Trif and Alexandru Vasiliu, judges of the Brasov Court of Appeals, experts of the National Institute of Magistrates. In 2001, they participated in a train-the-trainers session, in the Netherlands, conducted within a program developed by the National Institute of Magistrates and the Netherlands Helsinki Committee. Ever since, they have been part of the trainers' network of the National Institute of Magistrates for continuing legal education of magistrates.

**Teaching Methods.** The moderators selected as their teaching method the use of case studies. This method was used and highly appreciated in other seminars. It allowed the participants to discuss provisions of Law No. 544/2001, interpret and apply them to practical situations in an interactive manner. Also, working groups were formed and participants engaged in lively debates discussing controversial or unclear aspects of Law No. 544/2001 and Government Decision No. 123/2002. The attendees also conferred about the type of public interest information produced and/or managed by the courts. In that last session ABA/CEELI sought the opinion of judges specialized in FOIA cases to assist courts in complying with provisions of Law No. 544/2001 and posting, nationwide, a list of public interest information (an obligation of any public institution imposed by Article 5, points (g) and (h) of the respective legislation).

**Seminar Materials.** ABA/CEELI provided all the participants, in advance of the seminars, with a booklet entitled "Access to Public Interest Information – a Theoretical and Practical Guide for Judges" ("Guide"). The Guide was drafted by CEELI staff with USAID funding in order to assist judges who review cases arising under the Law on Access to Public Interest Information, as well as to discuss a series of controversial or unclear aspects resulting from the interpretation and application of both Law No. 544/2001 and Government Decision No. 123/2002. The jurisprudence chapter of the Guide was appreciated by the participants as an essential tool in the creation of a consistent practice in the area of access to public interest information. The case studies proposed by the two moderators were distributed, on the other hand, to the participants during the first day of the seminar.

## II. ORGANIZATION OF THE SEMINARS

Each seminar opened with an **introductory session**, during which participants introduced themselves and presented the main reasons why they were interested in the topic. The judges' motivations included the following:

- to study thoroughly, in an interactive manner, provisions of Law No. 544/2001;
- to help create a consistent jurisprudence in this area and to engage in an exchange of experiences with colleagues of other courts;
- to clarify the status of public servants working in the information and public relations offices of the courts;
- to learn the judicial practice in the area;
- to create a list of documents that courts have the obligation to publish under Law No. 544/2001;
- to discuss the division of responsibilities between public servants in charge of information and public relation offices and judges who are the courts' spokespersons;
- to improve their knowledge about the relationships between judges and the media;
- to promote a thorough knowledge of the aspects raised by Law No. 544/2001 not only by the judges who review such cases, but by all the members of the judiciary branch, because this should be a matter of general public interest;
- to discuss and analyze inconsistencies existing between Law No. 544/2001 and Government Decision No. 123/2002 on the methodological norms of the application of Law No.544/2001.

The discussions of the next sessions of the seminars focused on a number of **case studies** – three for the seminar organized in Craiova<sup>2</sup> and five for the other two seminars (Constanta and Iasi). The case studies and the ensuing dialogue focused on the following main issues:

- definition of public information and classified information, as regulated by Law No. 182/2002;
- presumption that the petitioner's request is legitimate;
- questions related to awards of moral and/or financial compensatory damages;
- aspects related to the calculation of deadlines specified by Law No. 544/2001;
- the optional nature of administrative procedures that can precede the filing of a lawsuit in court.

In order to promote an interactive exchange of ideas, moderators used working groups. Participants were divided in three groups and a spokesperson was assigned for each group. The spokesperson was responsible for presenting the opinions of the majority and the conclusions reached by the group at the end of the debate. Participants who did not adhere to the majority's opinion were encouraged to submit their separate opinions individually. The organizers considered particularly important the disclosure of both the majority and the minority opinions, each supported by the arguments put forward by the participants. These views are useful toward the creation of a consistent and uniform jurisprudence and possibly toward amending the current legislation.

During the third part of the seminars, the participants, together with the moderators, compiled a **list of communications and documents produced and/or managed by the courts** which should be considered public information according to the provisions of Law No. 544/2001. It is worth mentioning, however, that attendees tended to disagree on what type of information should, or should not, be available to the public.

<sup>2</sup> The first seminar (Craiova) was held for the course of one day. Afterwards, based on the participants' suggestions, organizers determined that such a period was not sufficient to address all the issues raised by the legislation in the area of public interest information. Therefore, the next two seminars were conducted for two days.

# III. DEBATES

## A. Case Studies

### 1. Case Study No. 1

*A.B., a resident in town X, requested from the local council the following data:*

- *a copy of the minutes of the business meeting in which the Council selected a contractor to repair the main streets in the city, and a copy of such contract;*
  - *the number of public services contracts awarded by the Council in the previous year and the total amount of revenue gained by the municipality through those contracts.*
- The Local Council did not respond.*

*The petitioner asked that the court require the defendant to provide an answer, and pay 20,000,000 ROL for moral compensatory damages.*

***Question:***

*What should be the court's decision? Please, develop arguments in support of your position.*

In discussing **case study No. 1**, participants made the following comments:

#### **a. The Seminar in Craiova:**

- The local council must provide the petitioner with a copy of the contract for repairs of the main streets, and the minutes of the meeting in which the council selected the contractor. Some participants expressed reservations regarding the public character of the whole contract; they stated that, based on the exceptions specified in Article 12, point (c) of Law No. 544/2001 which lists the information that shall be excluded from citizens' free access

to information, the local council has an obligation to provide the petitioner only with information regarding the amount of the contract, but not its other clauses.

- Unanimously, the participants agreed that the information regarding the number of service contracts signed in the previous year, as well as the total amount of revenue obtained by the municipality through those contracts had to be communicated to the petitioner.
- Most of the participants opined that the judge has the discretion to award moral damages, but he/she does not have to issue such an award; the law does not specify any obligation but only the possibility of awarding damages. Other participants opined that the culpable, defying attitude of the institution (which failed to communicate any answer to the petitioner) should be a sufficient basis for sanctions to pay moral damages. However, in such situations, damages caused to the petitioner need to be proven and closely scrutinized. Furthermore, it is necessary to have solid grounds for awarding moral damages.

#### **b. The Seminar in Constanta:**

- The plaintiff's request is well-founded, therefore pursuant to Article 5 of the Law No. 544/2001, the defendant has the obligation to provide the requested information.
- In the opinion of some participants, the simple fact that the institution did not communicate an answer represented a failure to fulfill its obligations and that in itself was sufficient justification to award damages. Other participants opined that only nominal, symbolic moral damages should be awarded because the damages suffered by the plaintiff could not be proven, but the attitude of the institution (its conduct, the manner in which it refused to fulfill the request and the possible harm to the requester's dignity) had to be sanctioned. Lastly, some participants stated that moral damages should not be awarded at all, because a refusal to disclose information does not automatically cause any moral damages.
- During the discussions, the concept of "moral damages" was intensely debated and analyzed. The participants mentioned that moral damages constitute a key element in establishing the compensation for violating the obligations arising under Law No. 544/2001. It was opined that since the right to information is not of financial nature, its violation would automatically entail the awarding of moral damages; furthermore, calculation of such damages is a complex process with criteria that depend on the seriousness of the violation, the factual situation, rights that were violated, and other factors.
- Regarding the copy of the minutes of the local council's meeting, there were opinions that since such a document is the result of deliberations, it

could fall under the exceptions listed in Article 12, point (b) of the Law No. 544/2001 (information on deliberations of the authorities, as well as information with respect to the economic and political interests of Romania, shall not be available to the public if it is included in the list of classified information, under the law). However, according to the practice of the European Court for Human Rights and the conditions expressly specified by Law No. 182/2002 on classified information, such a situation would not be covered by these exceptions and, consequently, the petitioner should ultimately be provided with the requested document.

### **c. The Seminar in Iasi:**

- The participants unanimously agreed that the court should rule that the local council had an obligation to provide the petitioner with the requested information. The local council is a public institution as defined by Article 19 of the Law No. 544/2001 and pursuant to Article 12 (c) of the same law<sup>3</sup> it had the obligation to communicate in writing its refusal to provide information. Through its attitude, the institution violated the provisions of Article 7 of Law No. 544/2001<sup>4</sup> and Article 16 of Government Decision No. 123/2002<sup>5</sup>.
- Participants confirmed that, consistent with the language in Art.12 (c) of Law no.544/2001, disclosure of the information requested created no harm.
- Meetings and decisions of the local council were considered by the participants to be public and of public interest and they were related to public order issues; consequently, minutes and other related information should be provided to any interested person. There was also a minority opinion that the minutes of the meeting should not be provided to the petitioner because this document has been prepared prior to making a decision; furthermore, only the result of deliberations is of public interest, but that does not include the manner in which a decision was reached. In support of their opinion, the participants invoked Article 12 (b) of the Law No. 544/2001, which specifies that information regarding deliberations of public institutions is excluded from free access to citizens only if it belongs to a category of classified information – however, that was not the situation in the fact pattern presented in the case study.

<sup>3</sup> “The following information shall be excluded from citizens’ free access to information provided by Article 1: information on commercial or financial operations if their publication harms the principle of fair competition under the law”.

<sup>4</sup> “Public authorities and institutions have the duty to reply in writing to a request of public interest information within 10 days or, as the case may be, 30 days from the registration of a request, depending on the difficulty, complexity, volume of research and urgency of the request”.

<sup>5</sup> “Deadlines for the communication in writing of an answer to persons requesting public interest information are those specified by Law No. 544/2001”.

## 2. Case Study no. 2

*A journalist requested from the Court of Appeals in his city the following information:*

- *the number of cases pending in the court during year 2003 which dealt with accounting of assets for public officials that fall under the provisions of Law No. 115/1996, and copies of the respective decisions (both of the commission for control of assets and the judge-panels);*
- *a copy of the divorce petition and the witnesses' depositions in a civil case in which the town's mayor was the appellant;*
- *the names of the judges working in the administrative law division of the court.*

*The court refused to provide him with the requested data. The reasons given for the denial were that such information was excluded from the category of public interest information, and the petitioner could not prove a legitimate interest to obtain them.*

### ***Question:***

*What is your opinion about the answer provided by the Court of Appeals, and what legal instruments, as specified by Law No. 544/2001, are available for the journalist to pursue his complaint?*

The relevant aspects underlined during the discussion of **case study No. 2** were the following:

### **a. The Seminars in Craiova and Constanta:**

- The number of pending cases should be disclosed because such information is solely statistical and it does not fall under the restrictions imposed by Law No. 544/2001.
- The names of the judges working within the administrative law division of the court also fall under the public interest information released to anyone who requests such information.
- The participants had different opinions about the release of the court decisions in cases dealing with accounting of assets of high officials. Some of the participants stated that since the court decisions are subjected to disclosure by their virtue of being published, then the petitioner should be provided with information about the place where such decisions are published, i.e. archives of the court, the court hearing register. Other participants opined that petitioners should be provided simply with the court dispositions.
- All the participants found that copies of the divorce applications and witnesses' depositions are documents that may not be communicated to the petitioner because they contain personal information about the parties and do not fall under the scope of Law No. 544/2001.

## **b. The Seminar in Iasi:**

- The refusal of the Court of Appeals to provide the requested information is partially unjustified. The information should have been released because the court is a public institution and the information requested under headings 1 and 3 is of public interest. Furthermore, participants found that the journalist had a justified interest in requesting such information. Besides, Law No. 544/2001 does not require from journalists, or citizens in general, to prove a legitimate interest.
- In addition, the statistical information of the number of cases pending in the court dealing with the application of provisions of Law No. 115/1996 on Assets of Dignitaries had to be provided since it was of public interest. The participants mentioned that the decisions of the commission created under Law No. 115/1996 are also public, since they are published in the Official Journal. The majority of the participants opined that only ordinances for closed cases should be made public. Other decisions of the courts may be made public only if they are irrevocable and only with the parties' consent.
- The information requested under the second heading regarding the divorce proceeding is not of public interest and it is therefore excluded from open access by Articles 12(d) and 14 of the Law No. 544/2001. Such information may affect the capacity to hold a public position, and it may be communicated only with the party's consent.
- Judges are public persons, appointed by a decree of the President of Romania, published in the Official Journal; therefore, their names are of public interest and have to be disclosed.
- Regarding the legal instruments available to the journalist to pursue his/her complaint, the participants unanimously agreed that he/she may follow either the preliminary administrative procedure, which is not mandatory (pursuant to Article 21 (4) of the Romanian Constitution), or directly file a complaint with the administrative law division of the tribunal that has territorial jurisdiction over the matter.

## **3. Case Study no. 3**

*A human rights NGO requested from the Ministry of Interior the following information:*

- *the number of detention facilities administered by the county police (inspectorate) and the maximum number of persons that can be held in these facilities;*
- *the number of individuals detained currently in these facilities, including the number of those who have been convicted;*
- *the total number of personnel working in these locations.*

*The Ministry of Interior refused to communicate the information, on the grounds that the requested information is classified and, according to Article 12 of Law no. 544/2001, such*

*information is excluded from open access by the public. The NGO filed a complaint against the Ministry with the tribunal.*

***Question:***

*How should the tribunal decide? Please, develop arguments in support of your position.*

In discussing **case study No. 3**, the participants raised the following issues and reached the following conclusions:

**a. The Seminars in Craiova and Constanta:**

- The participants opined that requests of purely statistical data, even if related with classified information, are completely legal and acceptable, and therefore institutions that receive such requests have the obligation, under Law No. 544/2001, to communicate them.

**b. The Seminar in Iasi:**

- Participants found that all the requested information is of public interest, because it is neither classified nor excluded from public access on the basis of other legal grounds. The participants noted that categorization is in compliance with the definition provided by the Council of Europe to “public documents” – a definition which can be also found in the Guide made available by ABA/CEELI.
- The court should rule in favor of the complaint and find that the Ministry of Interior has an obligation to provide the requested information, which consists of purely statistical data that cannot affect national security in any manner.
- Another issue addressed by the participants was whether the court may request and examine a confidential document. The majority opinion was that this may be possible, provided that the court will treat that document as such. A minority opinion was that legislators included in this category certain documents that elude judicial control and that access to public interest information has its limits. In support of this opinion, participants invoked provisions of Law No. 182/2002 on classified information and of Government decision No. 585/2002 on the National Standards for protection of classified information.

## 4. Case Study no. 4

*On March 5, 2003, D.E. requested from the municipality of his town information on how the municipality operates. Since he received no answer, he filed a complaint with the court, on April 20, 2003.*

*During the first court session, the defendant invoked two procedural violations:*

- *Missed deadline: the plaintiff should have filed the complaint within 30 days from the date when the 10-day deadline for a response expired (as specified by Article 7(1) of Law No. 544/2001);*
- *Not following the proper procedure before filing a complaint in the court: the plaintiff should have filed an administrative complaint, as specified by Article 21 of Law No. 544/2001 and by Article 36 of the Methodological Norms approved by Government Decree No. 123/2002.*

### ***Question:***

*What should the court decide?*

**Case study No. 4** generated discussions regarding the deadlines specified by Law No. 544/2001 and the participants reached the following conclusions:

### **a. The Seminar in Constanta**

Analyzing if 1) deadlines and 2) preliminary administrative procedures have been observed, participants expressed following opinions:

1)

- The deadline to file a complaint about a failure to answer a request submitted under Law No. 544/2001 is, in some participants' opinion, of **40 days** (10 days – during which the public institution or agency can prepare an answer – plus 30 days – the term within which a complaint may be filed in court after the deadline for disclosure has been exceeded).
- Most of the other participants opined that the deadline is of **60 days** (30 days – the period specified by Article 21(2) – plus 30 days – the term within which a complaint may be filed in court after the deadline for disclosure has been exceeded).

2)

Most of the participants thought that following the administrative procedures track is optional, and the applicant does not need to go the administrative route prior to filing a complaint with the court. This view is also supported particularly in a situation when an applicant who, following these procedures, finds himself in the situation of missing the deadline to file a complaint in court and therefore the court will reject it.

## **b. The Seminar in Iasi:**

- The 30-day deadline within which a public interest information petitioner may address the court should be calculated from the date when the maximum 30-day deadline specified by Article 7 expired; consequently, a petitioner who did not receive an answer from the public institution has **60 days** available (30 days plus 30 days) from the date he submitted the request for information to file a complaint with the court.
- There was also a minority opinion advocating that the 30-day deadline should be calculated from the date the 10-day deadline expired; consequently, an applicant would have only **40 days** (30 days plus 10 days) to file a complaint with the court, calculated from the time when the request was registered with the institution. In support of their opinion, the participants stated that these deadlines are established by law in favor of the petitioners who have an interest in obtaining the information in the shortest period of time. In support of this opinion comes also, as pointed out by some participants, the principle that the law should be predictable and decisions consistent with the intent of the law.
- On the other hand, as pointed out by other participants, such an interpretation would work against petitioners who file their complaints within the 60-day term mentioned above, violating, in this way the same principle of predictability.
- In conclusion, participants unanimously agreed that a complaint filed within the 60-day deadline should not be rejected by the court either for having exceeded that deadline or for being filed too soon, when it was filed within the 40-day deadline, precisely to observe the principle of predictability of the law. Consequently, in the case study at hand, the court should have rejected the defendant's argument that the plaintiff had exceeded the deadline invoked by the defendant.
- Participants mentioned that the requested information should have been communicated *ex officio*, in compliance with Article 5 (b) of the Law No. 544/2001 on free access to information.
- Attendees also addressed the manner to calculate deadlines as specified by Law No. 544/2001. Participants underlined that this specific legislation uses the term "days," while its Methodological Norms set by the Government Decision No.123/2002 use the term of "business days," therefore altering provisions of Law No. 544/2001. However, other participants opined that the provisions of the Norms referring to business days take into account the procedures prior to filing a complaint with the court and, since public institutions work only during business days, provisions of the Norms could be applied.
- Finally, the participants unanimously concluded that the second argument invoked by the defendant – plaintiff did not follow the preliminary admin-

istrative procedure – should be rejected by the court out-of-hand because such procedure is not mandatory.

## 5. Case Study no. 5

*On May 5, 2003, F.G. requested X Prefect's Office to provide him with public interest data; his petition was registered on this date.*

*On May 9, 2003, the information department of this institution communicated to him, in writing, a refusal to provide him with the requested information.*

*On May 15, 2003, based on Article 21 (2) of Law No. 544/2000, the petitioner filed an administrative complaint to prefect B. B., head of the institution.*

*On June 15, 2003, the petitioner was informed that his administrative complaint was rejected, because it was found to be unjustified. On the same date, F.G. filed a complaint with the court.*

*In a written reply, the defendant answered the complaint on grounds that it was not filed within the required deadlines.*

**Question:**

*How should the court decide?*

In examining **case study No. 5**, the participants continued to discuss the optional character of administrative complaints and concluded the following:

### **a. The Seminar in Constanta:**

- An administrative complaint should not prevent the initiation of a court action. Finding otherwise would be grounds for declaring unconstitutional the provisions of Law No. 544/2001 in relation with Article 21 of the Constitution on free access to justice. If an applicant follows the administrative complaint procedures, and his/her complaint in court is rejected because he/she missed the deadline to file the complaint, one can conclude that the law itself limits access to justice since the applicant acted in good faith and complied with all the legal provisions.

### **b. The Seminar in Iasi:**

- The participants noticed a lack of correlation between Article 21 of Law No. 544/2001 on free access to information (which regulates the sanctions

and procedures to be followed in case of refusal of applying the provisions of Law No. 544/2001) and Article 16 of the Government Decision no. 123/2002 (which provides deadlines for the communication in writing of an answer to persons requesting public interest information) because if a petitioner continues to be dissatisfied after receiving an answer to his/her administrative complaint, then he/she would be missing the deadline within which a complaint can be filed in court.

- Others opined that the court should reject the argument that the deadline to file a complaint with the court was exceeded, because the 30-day deadline should be calculated from the date when a petitioner received an answer to his/her administrative complaint.

- However, in other participants' opinion, the argument aforementioned should be accepted by the court because the 30-day deadline should be calculated from the time when a petitioner received in writing a refusal of the public institution to provide him/her with the requested information. In support of their opinion, they invoked Article 22<sup>6</sup>, first sentence of Law No. 544/2001 which does not draw any distinction between the filing of an administrative complaint and the filing of a court action, specifying a single 30-day deadline.

- Considering the lack of correlation between provisions of the two norms, participants thought that the best practice would be for a petitioner to simultaneously file an administrative complaint and a court action. However, they considered that to have to resort to such practice would be absurd.

## **B. Legal Practice Considerations**

While discussing the case studies, the participants and moderators identified various aspects of the law that per existing jurisprudence were not interpreted in a clear way and were applied inconsistently. The Guide provided by the organizers helped the participants to identify such considerations and they formed the basis for another session of the seminars. The discussions included the following topics:

<sup>6</sup> "If a person considers himself/herself damaged in his/her rights provided by the present law, he/she may submit a complaint to the administrative section of the court with jurisdiction over his/her residence or over the public authority or institution. The complaint shall be submitted within 30 days from the expiration of the period provided by Article 7"

## 1. The Seminar in Craiova:

a. *Classified information – the possibility to be censored by courts; judges' access to classified information.*

A legitimate question was raised – whether a judge can examine (confidentially) and, at the same time, censor the content of classified documents, in order to decide if the information requested is of public interest or classified.

According to applicable legislation, persons who may have access and examine or hold classified information need to have a special permit. However, such provision cannot be applicable to judges, as all magistrates perform their activity under professional oath. Furthermore, the Law on Judicial Organization does not set forth a special category of judges authorized to examine or hold classified information.

Participants thought that, in order to review a case thoroughly, a judge needs to be certain that the information is indeed of a classified nature and, in order to do so, he/she needs to have access to the presumably classified information. However, as a result, such information could not be communicated to the parties and as such partially violate the rule of access to documents.

Another aspect of this issue was raised by the participants: to what extent can a piece of information maintain its classified character since, in order to follow the procedure rules, litigants have the right to access evidence produced by the opposing party.

### ***Recommendation:***

**It is evident that this issue generates many difficulties for judges. For this reason, a consistent solution, adopted in accordance with the purpose of Law No. 544/2001 and Law No. 182/1992 on classified information is highly recommended.**

b. *Court session deadlines and preliminary procedures*

The participants mentioned that in many of the actions filed under Law No. 544/2001, respondents, through an objection, invoked the fact that the plaintiff filed the claim prematurely, without using previously an administrative claim. The participants unanimously agreed that the provisions of Government Decision No. 123/2002 which explains the Law are instructive. While the Law does not include an explicit requirement for

an administrative claim procedure, the provisions of Government Decision No. 123/2002 maintain such a procedure as mandatory. However, in such a case, the plaintiff generally misses the deadlines established by law for access to justice and, consequently, the complaint may be rejected because it was filed too late.

Participants concluded that some public institutions erroneously interpreted the deadlines specified by Article 7, paragraph (1), section II of Law No. 544/2001 (“if the time necessary to prepare the answer exceeds 10 days, an institution may respond within a maximum of 30 days”). Such institutions consider that the period granted by law for preparing the response is 40 days (10 days+30 days). However, there are also other institutions which interpreted correctly the legal provisions, by finding that the 10 days are included in the 30 days.

If an institution is at fault for not having answered the request within the set deadline, and caused the plaintiff, who followed the administrative claim procedure, to miss the deadline for filing a complaint in court, most of the judges agreed that these are solid grounds for setting a new deadline, as required by civil procedures provisions. An alternate solution is interpreting Law No. 544/2001 by making reference to the terms set by Law No. 29/1990 on Administrative Disputes<sup>7</sup>. The participants invoked the principle of predictability of legal norms, requiring such norms to be clear to the litigants.

In practice, the deadline specified by Article 8, paragraph (5) of the Law No. 544/2001 also raised some problems of interpretation and application regarding public information requests made by the media. If such requests are not answered within 24 hours, are ambiguous or require additional clarifications, then the institution can be sued for failure to comply with Article 8, paragraph (5). In the participants’ opinion, such terms are over restrictive.

*c. Refusal to provide requested information on the grounds that it is not listed in Article 5*

After examining the jurisprudence provided by the ABA/CEELI Practical Guide, participants found that some institutions refused to provide information, on the ground that *the requested information was not listed in Article 5* of Law No. 544/2001 (referring to public interest information which any public institution has the obligation to communicate *ex officio*). Some of the courts also share this opinion.

<sup>7</sup> At the time when the seminars were conducted, Law no. 29/1990 on Administrative Disputes had not been repealed yet by the new Law no. 554/2004 on Administrative Disputes, published in the Official Journal of Romania on December 7, 2004.

All the participants opined that Article 5 contains only information which public institutions have the obligation to communicate *ex officio*, and, consequently, these provisions do not have an all-inclusive character. As a result, there are additional types of public interest information and documents that need to be made available to citizens.

*d. Response through the court written procedures; non-enforcement of a court decision; damages*

Another topic addressed by the moderators focused on the communication of public interest information, by a public institution, through a court written response to the petitioner's claim initiated under Law No. 544/2001. The courts have rendered inconsistent opinions on this issue. Some courts either dismissed the claim, as being unsubstantiated, or accepted the claim and required the public institution to answer the petitioner's request, without awarding any moral damages. In other cases, courts accepted the claim and required the public institutions to pay moral damages.

In the opinion of most participants, a claim should be accepted, under those circumstances because the court written response is not, under the law, equal to providing the public interest information; otherwise, the applicant would not have to employ the assistance of the courts if the information had been communicated to him/her within the deadlines established by law, and in compliance with the conditions of substance and form required by Law No. 544/2001. In support of this argument, participants invoked Article 275 of the Civil Procedure Code, referring to court fees, because acceptance of the petitioner's claims in the first court hearing exempts the respondent from their payment. Or, in the situation of access to public interest information, petitioners need to recover such expenses, taking into account the reason for which the court's assistance was invoked. At the same time, participants opined that under such circumstances, the court should review the petitioner's claim for moral damages and, depending on the circumstances of the case, grant them or not.

Participants also addressed the issue of non-enforcement of final and irrevocable court decisions based on Law No. 544/2001, and the mechanisms through which a petitioner can use his/her right to public interest information. The participants suggested that penalties should be applied for each day of delay, but concluded on the other hand that such penalties are applied only in civil and commercial cases, and not in administrative ones. Under the circumstances, the only constraint instrument of compliance in the area of access to public information, under Law No. 544/2001, is the one specified by Article 16 of the Law No. 29/1990 on Administrative Disputes. According to

this article, the possibility of granting moral compensation damages for failure to enforce court decisions exists, this being an equivalent to penalties applied in the civil procedures. However, in such cases, establishing proof of damages is mandatory.

*e. Disciplinary liability of public servants working in public information offices*

According to Article 21 of Law No. 544/2001, public servants working in public information offices can be held disciplinarily liable in case of failure to fulfill the obligations required by law. The participants raised the question whether the court may interfere and oblige the institution to apply disciplinary sanctions, when it finds that such measures have not been taken. They concluded that Law No. 544/2001 does not expressly set forth such a possibility, and that intervention of the court could be seen as exceeding its prerogatives, listed by Article 21 of the Law. Moreover, the person responsible for access to public interest information has a status of public servant, to whom special provisions of the Statute of Public Servants are applicable, and for whom there are special disciplinary boards.

This opinion was also supported by arguments drawn from written responses filed in court by defendant institutions. Through such documents, institutions invoked legal provisions that enable petitioners to address such an issue to the institution, not to the court, in order to establish whether there has been a disciplinary violation.

*f. Abuse of law*

Participants opined that the provision regarding abuse of law should be applied to those petitioners who do not use provisions of Law No. 544/2001 for the purpose they were adopted, but in order to simply make the activity of public institutions, in general, and of courts, in particular, more difficult.

## **2. The Seminar in Constanta:**

*a. Classified information – the possibility to be censored by courts; access of judges to classified information.*

Participants noted that, according to Article 12 of Law No. 544/2001 (referring to information excluded from open public access), Article 20 (establishing the possibility, for any Romanian natural person or legal entity, to appeal classification of information, the classification period and the manner in which a particular level of secrecy has been assigned) and Article 33 of Law No. 182/2002 (referring to the prohibition of classifying as

confidential information that is to inform citizens about public interest matters), there are two categories of secrets - state secrets and confidential information - but there is no indication of who establishes levels of secrecy and what criteria should be followed. Moreover, the participants addressed how, effective, a natural person or legal entity may challenge a public institution/agency on the level of secrecy, the period for which certain information was classified, and the outcome of such challenge.

Participants discussed to what extent a judge is allowed to examine and, as a result, modify substantively the list of classified documents, in order to determine whether the information requested is of public interest or classified. Participants discussed the issue of establishing a method for jurisdictional control on the classified character of public interest information.

In some participants' opinion, in order to review a case substantively, a judge needs to be certain about the nature of the information sought by the applicant. Consequently, invoking the classified nature of information cannot prevent judges from reviewing it. If documents containing classified information are part of a case, the judge shall not make public the information or the document containing it, but shall note the fact that he/she had that classified document available for review.

#### *b. Court hearing deadlines and preliminary procedures*

Besides the aspects discussed in detail within the case studies, participants also noticed that there are inconsistencies between provisions of Article 7 of Law No. 544/2001 (referring to the obligation of public institutions to answer a request within specific time frames) and those of Article 16 of its Methodological Norms regarding the manner of calculating deadlines – the Law specifies deadlines of 10 and 30 days (without specifying whether they are business or calendar days), while the Norms refer to *business days*, resulting in a material change in the calculation of the deadlines.

#### *c. Ambiguous Article 4 provisions*

Participants also noted that Article 4 was ambiguous about the obligation to create a specialized information and public relations department or to appoint a person having responsibilities in the area.

d. *Definition of public institution or agency*

In defining the concept of “public institution or agency”, participants opined that more weight should be given to the criterion of “use of public money.” Under that definition, institutions such as public utilities and associations or the national bank would be included under the scope of Law No. 544/2001.

e. *Important distinction*

The participants were adamant about the need for a distinction between public information and the document containing it.

f. *Written preliminary acceptance of the claim; non-enforcement of a court decision; damages*

The moderators addressed the issue of communication of public interest information, by a public institution, through a written preliminary acceptance of the claim filed of an action initiated under Law No. 544/2001.

The participants had similar opinions as their colleagues in Craiova. They opined that in the case of a written preliminary acceptance of a claim, a complaint should be admitted, because the respective institution did not comply with the obligation imposed by Law No. 544/2001 and this led to filing of a claim before the court. As for the plaintiff’s claim for moral damages, the participants opined that the court had the duty to review it and, depending on the circumstances and evidence presented, decide whether such damages are warranted.

Participants identified a solution similar to that of their colleagues in Craiova in the situation when a final and irrevocable court decision, delivered in the area of access to public interest information, has not been enforced, as well as about the instruments available to an applicant to obtain information to which he/she is entitled. They found that awarding *penalties* in favor of the plaintiff, for each day of delay, would be a good solution, but an issue arises because penalties are not awarded in administrative cases, only in civil and commercial ones. Moreover, penalties have been created by practice and, in order to be enforced, they must be awarded as compensatory damages.

g. *Courts’ lack of obligation to comply with Recommendation 81 (19) of the Council of Europe on Access to Information Held by Public Agencies*

The participants reviewed the question of public access to court information and documents. Following an analysis of comparative documents contained in the Guide (Recommendation 81 (19) of the Council of Europe), they concluded that, according to the CoE recommendation, courts are

excepted from the list of public agencies obliged to provide public interest information. This aspect was also noted by the authors of the Guide. The Romanian legislation was interpreted by participants as a legislative intent pursuant to a provision contained in Law No. 303/2004 on Judicial Organization, to also include courts in the list of public institutions covered by Law No. 544/2001.

*h. Unconstitutionality of Article 12 of Law No. 544/2001 referring to information excluded from free access*

The participants remarked that Article 12 of Law No. 544/2001 runs counter to the Constitution, because it expands the range of public information excluded from public access; also, some provisions of the Methodological Norms run counter to provisions of Law No. 544/2001.

### **3. The Seminar in Iasi:**

*a. The issue of deadlines*

Referring to the manner of calculating the deadlines listed in Article 7, correlated with Article 22 of Law No. 544/2001, the participants concluded that a clearer regulation is necessary (for details, see the discussions of the case studies).

*b. Unclear procedural aspects*

Law No. 544/2001 should have included a chapter exclusively devoted to procedural norms, similar, for example, to those of Law no. 18/1991 on the Land Registry.

*c. Definition of public agency and public institution*

Clear definitions of “public agency” and “public institution” are necessary, because Article 2(a) of the Law No. 544/2001 on Free Access to Information does not provide such definitions. This runs counter to the legislative technique principles (such principles guide, in Romania, the drafting of laws).

*d. Article 12(f)*

Article 12(f) referring to judicial procedures should be worded differently in order to guide situations when a trial is considered fair and the parties’ cause of action is legitimate.

e. *Article 12(g)*

A definition of the term “*young persons*” in Article 12(g) is required because the term is not legally defined and, as such, may generate confusion and an inconsistent application of the law.

f. *Award of damages*

Some participants opined that failure to enforce a court decision rendered under Law No. 544/2001 should be reviewed according to administrative disputes procedures and not to civil procedures, a situation in which a bad-faith debtor is sanctioned. In other participants’ opinion, the administrative disputes procedures established by Law No. 29/1990 on Administrative Disputes should be applied, and the jurisdiction to decide such situations belongs to administrative disputes divisions of the respective tribunals and courts of appeals. They noted that, under such procedures, in case of a refusal to enforce a court decision, provisions of Article 580/3 of the Civil Code, referring to civil fines, should apply, because punitive damages are the result of legal practice and are not governed by specific legislation.

g. *Court written responses*

When discussing the situation in which a public institution provides the information requested through a courtwritten response, the participants had various opinions – some of them thought that the complaint should be dismissed, because it remained groundless, but such a decision does not prevent the court to award damages for the delay in response of the institution defendant, while others said that the complaint should be accepted, so that the issue of court fees owed by that public institution should be resolved fairly.

***Recommendation:***

**All these controversial or unclear aspects of Law No. 544/2001 and its Methodological Norms set by the Government Decision no.123/2002 should be subjected to a future analysis of the legislation in this area, for the purpose of amending it, so that courts should be spared the difficulties in applying some of the legal provisions in the area of access to public interest information.**

## C. Public Information/Documents

The last topic included in the seminar agenda was preparation of a list of court documents that should be available to the public, as well as a list including the categories of documents produced and/or managed by courts.

### *Recommendation:*

**These lists need to be established, especially as, four years after Law No. 544/2001 came into effect, courts have not complied with the obligation specified by Article 5 (g) and (h) (Any public authority or institution has the duty to communicate, ex officio, the following public interest information: the list of public interest documents and the list of categories of documents issued and/or administered under the law).**

When discussing this topic, participants found Chapter 3 of the ABA/CEELI Practical Guide useful. It provides for a compilation of magistrates' opinions on this topic<sup>8</sup>.

Moderators of the seminar asked the participants to draft a list of information/documents which should be public, and a list of information which should be confidential. Conclusions of debates, including comments and objections expressed by the participants, are presented in the tables below. Note: as a result of divergent opinions, some categories of documents appear in both columns.

### 1.The Seminar in Craiova:

Public information/documents	Confidential information/documents
<ul style="list-style-type: none"> <li>• information/documents listed in Article 5 of Law No. 544/2001;</li> <li>• the alphabetical index;</li> <li>• final penal sentences, both from a statistical point of view and the entire sentence decision (except for juveniles);</li> <li>• final and irrevocable decisions in civil and commercial cases;</li> <li>• judicial statistics information;</li> <li>• court annual report;</li> <li>• magistrates' disclosures of assets;</li> </ul>	<ul style="list-style-type: none"> <li>• information regarding the deliberation activity;</li> <li>• court clerk's records;</li> <li>• administrative correspondence of the court with authorities;</li> <li>• documents prepared by social service counselors (because they would affect juveniles' interests);</li> <li>• documents included in case files (which belong to parties and may be made public only with their consent);</li> </ul>

<sup>8</sup>In October 2003, CEELI requested all Courts of Appeals to send lists with proposals offered by their judges on this aspect. The following Courts of Appeals responded: Bucharest, Brasov, Cluj, Craiova, Constanta, Galati, Iasi, Pitesti, Oradea, Suceava and Timisoara.

Public information/documents	Confidential information/documents
<ul style="list-style-type: none"> <li>• list of court magistrates;</li> <li>• registries, hearing records (decisions);</li> <li>• financial data;</li> <li>• docket lists;</li> <li>• documents of the Land Registry archives;</li> <li>• extracts of the Land Registry;</li> <li>• filing of bankruptcy procedures;</li> <li>• personal data of parties, to the extent that they are related to their capacity to hold a public office;</li> <li>• final and irrevocable court decisions except for those regarding juveniles' private life and person;</li> <li>• procedural measures ordered by the court;</li> <li>• correspondence regarding the economic-financial activities of the court;</li> <li>• data of the court special registries (however, there are 18 registries and in each of them data that should be public or not, need to be specified);</li> <li>• court personnel's job description;</li> <li>• service orders for judges;</li> <li>• cassation register;</li> </ul>	<ul style="list-style-type: none"> <li>• court session decisions and intermediary decisions (for consistency – since neither the public prosecutor's indictment nor the court clerk's records are public, final and irrevocable court decisions should not be public either);</li> <li>• documents (contracts, etc.), based on data as registered in the Land Registry (there was a separate opinion, according to which such documents may be public only if they belong to the State private property);</li> <li>• registers;</li> <li>• cases referring to private life and underage individuals;</li> <li>• judges' evaluations (they may be public only under Article 14 of the Law, in case they are related to the capacity to hold a public office);</li> <li>• inspector-judges audit findings (they may become public only if they lead to a disciplinary action; otherwise, they have no effect);</li> </ul>

## 2. The Seminar in Constanta:

Public information/documents	Confidential information/documents
<ul style="list-style-type: none"> <li>• clerk’s record, because all records are compiled during public court hearings, and based on this record, intermediary court decisions, which are public, are issued;</li> <li>• court hearing registries</li> <li>• court hearing records/decision</li> <li>• land registry documents (minority opinion);</li> <li>• courts’ balance sheet;</li> <li>• reports of audits prepared by judge-inspectors, because they are published in the court’s balance sheet;</li> <li>• intermediary court decisions (majority opinion);</li> <li>• copies of documents contained in the files, except for copies of witnesses’ depositions.</li> </ul>	<ul style="list-style-type: none"> <li>• personal data</li> <li>• information related to the process of deliberation;</li> <li>• classified information contained in case files;</li> <li>• information that is confidential;</li> <li>• personal data of judges and parties (Article 14);</li> <li>• the complaint, depending on its subject or on its content (personal data, private life, etc);</li> <li>• personal data of court’s support staff (Article 14);</li> <li>• list of witnesses protected by law;</li> <li>• classified depositions of witnesses;</li> <li>• documents submitted by parties, depending on their content (personal data, private life, etc);</li> <li>• files classified under the law (i.e., files of National Council for Studying the Security Archives (NCSSA));</li> <li>• documents in criminal cases related to prolongation of pretrial arrest period;</li> <li>• criminal investigation documents until the case is sent to trial;</li> <li>• documents regarding juveniles;</li> <li>• land registry documents (most participants agreed on this);</li> <li>• judges’ evaluation forms;</li> <li>• disciplinary investigation documents until a decision is made;</li> <li>• documents of rehabilitation counselors, as they contain personal data;</li> <li>• documents of the Commerce Registry, based on which intermediary court decisions are issued;</li> <li>• intermediary court decisions (minority opinion).</li> </ul>

### 3.The Seminar in Iasi:

Public information/documents	Confidential information/documents
<ul style="list-style-type: none"> <li>• court registries (except for those listed in the other column and with reservations/comments below);</li> <li>• <i>disagreement</i> regarding the cassation registries which include information on decisions that were annulled or appealed on grounds of judicial errors;</li> <li>• cassation practice – a published compilation of decisions that were annulled or appealed on grounds of judicial errors;</li> <li>• <i>disagreement</i> regarding the judges' evaluation forms – these forms contain personal data, which are excluded from free access. Further, procedures can improve the score obtained initially;</li> <li>• statistical data of any type;</li> <li>• <i>disagreement</i> regarding the decisions of the court governing board (which generally includes president of court, vice-president(s), and judge inspectors) – they should be made public (as that special decision registry, created under Article 21, paragraph 5 of the By-laws), while board meetings are confidential;</li> <li>• court hearings and judicial procedures, except for those that are confidential, involve personal data or juveniles (note: we should not confuse the public character of court hearings and public interest information/documents);</li> <li>• decision records, whether they are final/irrevocable or not (except for those delivered against juveniles/</li> </ul>	<ul style="list-style-type: none"> <li>• search and wiretap orders issued by courts because, if they are made public, then they will no longer achieve their intended purpose;</li> <li>• secret mail registries;</li> <li>• control registries, where results of substance abuse control are mentioned;</li> <li>• documents included in pending files – according to Article 95, paragraph 2 of the Bylaws on Courts Organization and Operation, they may be consulted only by the parties who prove an interest in the litigation, as well as by accredited journalists (this applies also to international adoption files);</li> <li>• documents and information in commercial disputes which are decided in chamber;</li> <li>• non-contentious procedures;</li> <li>• meetings of the court's governing board.</li> </ul>

<p>young persons);</p> <ul style="list-style-type: none"> <li>• court hearing dockets;</li> <li>• files containing bankruptcy procedures (there were comments on the fact that if such procedures are made public, this could affect the principle of free competition – Article 12 (c).</li> <li>• financial and accounting documents;</li> <li>• job descriptions and service orders;</li> <li>• correspondence of the courts with other institutions, within the limits established by Article 12 of the Law;</li> <li>• evaluation forms of public servants in charge of information and public relations offices;</li> <li>• attendance records;</li> <li>• extradition decisions – <i>disagreement</i> – procedures in extradition cases are not public (Article 67 of Law No. 302/2004), but, after a decision is issued, they become public.</li> </ul>	
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As demonstrated in the tables above, the participants in the seminars did not reach uniform conclusions regarding what categories of court documents and information should be made public.

***Recommendation***

**The Superior Council of Magistrates, taking into account the opinions expressed by judges and public servants in charge of information and public relations offices with respect to public interest documents produced and/or managed by courts, should decide on the final form and content of the list, which must be posted by courts nationwide.**

## **D. Organization and Operation of Information and Public Relations Offices as set by the Internal Regulations of Courts**

During the seminars, judges discussed also aspects related to the organization and operation of information and public relations offices<sup>9</sup>. Some of the issues identified and discussed by the participants were the following:

- The judges expressed reservations concerning the appointment of a judge both as a court spokesperson and as a responsible/coordinator of the information and public relations office. They proposed that, for such a position, a person specialized in communication and relations with the media be employed, preferably a former journalist. Their arguments in support of this proposal were: 1) the judge with these responsibilities would not have the time necessary for his/her judicial activities and, because of this, delivery of justice would be affected; 2) the judge appointed in such a position may be subject to disciplinary sanctions in case of violation of Law No. 544/2001, a fact that runs counter to the Law No. 303/2004 on the Statute of Magistrates; and 3) only a person especially trained in communication can carry out such activities properly.
- The Regulation should also specify that public servants must attend periodical specialized training sessions in the area, during which they will be able to exchange experiences regarding the jurisprudence of courts under Law No. 544/2001 and the manner in which information and public relations offices are organized and function.
- The job description listing responsibilities for the judge who is a court spokesperson and a coordinator of the information and public relations office is extremely broad. Under the circumstances, if judges are maintained in such positions, they should be exempted of judicial activities or such activities should be limited to one court session per month, as is the case for court presidents or inspector judges.
- According to Article 82 of the Bylaws on the Organization and Operation of Courts and to Article 17 of Government Decision No. 123/2002, these offices should be open late, one day per week, beyond normal working hours of courts. The participants concluded that the schedule for that day should be arranged so that the 8-hour per day work schedule, set forth by the Labor Code and the Constitution, is observed.

<sup>9</sup> We found that many of the issues mentioned by the participants in the seminar in Iasi regarding organization and operation of information and public relations offices were mentioned also by their colleagues in Constanta during the debates on controversial/unclear aspects of Law No. 544/2001. Also, ABA/CEELI distributed questionnaires to a representative sample of public interest information offices – questionnaire results confirmed opinions expressed in the seminars.

- The equipment necessary to these offices should include a telephone line, a fax, a computer and a copy machine.
- Reproduction services in courts for documents containing public interest information are currently poor, and clear norms should be introduced in the Regulation. Courts do not have copy machines available to the public, a service which is provided instead by commercial companies that are allotted court space to install a copy machine. In addition, since court clerks are prohibited from providing original court files to third parties, it should be noted that, in the case of public interest information requests, a court clerk assigned to the archives department would be prevented from copying such documents.
- Participants unanimously opined that reproduction costs should be set and applied uniformly because, currently, courts apply different fees, and this could lead to a perception that court system is inconsistent.
- Cash register desks do not exist, though, in courts. Such desks could operate in tribunals, which are in charge of court budgets for their jurisdiction. A court employee should be appointed to collect reproduction fees from the public.
- Even though public servants in charge of information and public relations offices have a legal background, their length of service as public servants is not taken into account for seniority purposes in the law profession. (Article 116 of Law No. 304/2004); consequently, participants suggested an amendment of the current law.
- When these offices issue copies of court documents, as requested under Law No. 544/2001, the court seal should be applied according to the majority opinion, to authenticate the documents as true copies.
- Participants examined the question of whether petitioners who seek public information should pay a court fee. They concluded unanimously that they should not pay court fees.
- There were long debates about the procedural aspect related to who should sign written responses to requests under Law No. 544/2001. In some courts, the practice is that responses are signed by the court president, the supervisor of the public relations department and the public servant; in other courts they are signed by the supervisor and the public servant in charge of the information and public relations office. The participants concluded that the court president should sign these official letters, because (s)he represents the court and engages the court's liability. Furthermore, according to Article 81, paragraph 3 of the Bylaws, petitions are reviewed under the president's supervision. If the public servant does not agree with the president's decision concerning a request, (s)he may express a separate opinion, based on special provisions on liability, and may refuse to sign the document.

***Recommendation:***

**A consistent practice needs to be created regarding the organization and operation of Information and Public Relations Offices, taking into account the consequences generated by an inconsistent application of the law.**

## **E. EVALUATIONS**

At the end of the seminar, ABA/CEELI distributed evaluation forms to the participants. The answers indicated that the seminars and the manner in which the Law on Open Access to Public Interest Information was addressed during the seminars were considered a success, and that similar seminars should continue to be offered as part of continuous education programs for judges.

## IV. CONCLUSION

The adoption of the Freedom of Information Act in 2001 was an important step forward in Romania toward establishing good governance and accountability of public institutions. However, as noted by ABA/CEELI staff in the Guide it developed for seminars on the FOI law, several flaws and gaps need to be remedied if the law is to function properly. This assessment was confirmed by seminar attendees, all judges who hear FOIA cases or staff that respond to public information requests.

Romanian authorities, in particular the Superior Council of Magistrates, have an important role to play in remedying these deficiencies. In particular, some aspects of the law and its regulations need to be clarified (deadlines for submitting a file in court, awarding of moral compensatory damages,) to ensure consistency of jurisprudence; a national list of court documents that should be made available to the public needs to be established and posted in all courts; operations of FOIA offices should be consistent, nationwide whether this applies to signatories of responses to petitioners, or application of fees.

These steps will go a long way toward improving the efficiency of processing FOIA related cases, and ensuring that the law has predictable outcomes. Just as important, proper and speedy implementation of the law will assure the public and the media that governmental institutions are indeed transparent and accountable.